cannot support the children they can be sent to the father who supports them and looks after them on condition that he cannot change their tribe.

The Kathi was also called and gave evidence that in his opinion under the *Hukum Shara* the mother had the custody until the children were ten and the father had to provide maintenance.

In this case the respondent did not establish before the Magistrate what were the terms of the custom on which he relied. And even if it is conceded that, under the *adat,* the rule is as given in the two cases cited, then as "*adat* is right action in the matters of every day life as well as in obedience of the law of the land" (Papers on Malay Subjects—Law—*Wilkinson,* page 14), right action or equity or justice would not permit it to be applied to this case where the facts are different. Also in this case the expert evidence is contradictory. The senior lembaga seems to realize the difficulty. As I understand his evidence he would give the husband custody though that appears contrary to the rule stated above and is contrary to Muhammadan Law and to the interest of the infant children. I think he meant that as the father was entitled to custody owing to the lack of property in the mother, the father ought in principle to maintain the children. But it involves even a good deal of reading between the lines of the evidence to reach that conclusion as to the meaning of his evidence.

I think in the circumstances of this case that as the respondent has married under the Muhammadan Law and has exercised the right of polygamy so given to him, he must, in the absence of proof of a custom varying that law, be bound by that law so far as it affects his duties to these children of the appellant.

For those reasons I set aside the Magistrate's order and made an order for maintenance.

Order for maintenance.

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

September 30, 1940.

CHELLIAH v. PUBLIC PROSECUTOR.

[N.S. MAGISTRATE'S CRIMINAL APPEAL No. 32 of 1940]

Criminal Procedure Code, S. 261 (Proviso)—Change of Magistrate during hearing.

Where a case is partly heard before one Magistrate and adjourned and the hearing is resumed before another Magistrate, it is obligatory for the second Magistrate to recall witnesses if the accused asks for them.

MAGISTRATE'S CRIMINAL APPEAL.

Muttu-Ramalingam for Appellant.

Grattan-Bellew, Deputy Public Prosecutor, for Public Prosecutor (Respondent).

Horne, J.—The appellant was charged with using on the 2nd March, 1939, a motor car with inefficient brakes. On the 24th March, 1939, two prosecution witnesses were examined and an adjournment allowed to 31st March. On that day a further adjournment took place to 21st April and there is nothing on the record to show what happened on that day. The case was resumed by another Magistrate on the 26th January, 1940, when the advocate for the appellant asked the Magistrate to recall the witnesses for the prosecution. The *proviso* to section 261 of the Criminal Procedure Code which governs a change of Magistrate during a hearing is in these terms:—

> "(a) In any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;"

In my opinion, such a word as "demand" makes it obligatory for the Magistrate to recall such witnesses if the accused asks for them and leaves no discretion to the Magistrate to act upon evidence partly recorded by his predecessor and partly by himself.

The conviction is quashed and the fine paid is to be returned.

I would add that the time elapsing between the offence viz. 2nd March 1939 and the conviction 30th January 1940, a period of almost eleven months, is an inexcusable delay having regard to the nature of the charge. Apparently the fault lies with the first Magistrate in granting an indefinite adjournment.

Conviction quashed.

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

September 30, 1940.

MURUGIAH v. PUBLIC PROSECUTOR.

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 34 of 1940]

Appeal—grounds of decision—necessity for stating reasons for believing or disbelieving evidence for prosecution or for accused—Criminal Procedure Code; S. 307 (iii); Theft—accused's explanation—sufficiency of.

In giving his "grounds of decision" under Section 307 (iii) of the Criminal Procedure Code, a Magistrate should state, except in the simplest of cases, the reasons why he believed or disbelieved the evidence given on behalf of the prosecution or of the accused, and not